

CWP-26006-2023

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2023:PHHC:147007

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-26006-2023

Date of decision : 20.11.2023

Gurnam Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Deepak Goyal, Advocate
for the petitioner.

Mr.Ferry Sofat, Addl.A.G. Punjab.

VIKAS BAHL, J.(ORAL)

1. This is a civil writ petition filed under Article 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction especially in the nature of certiorari for quashing of impugned order dated 07.08.2023 (Annexure P-12) passed by respondent no.2 whereby appeal bearing no.2841 of 2021 titled as “Gurnam Singh vs. Public Information Officer Sub Division Nabha and another” filed by the petitioner has been disposed of and the case has been closed in his absence.

2. Learned counsel for the petitioner has submitted that vide application dated 01.02.2021 the petitioner had applied under the Right to Information Act seeking information on 10 points. It is further submitted that when the complete information was not provided, the petitioner had filed the first appeal and thereafter, second appeal was filed and in the said appeal, various orders were passed including the order dated 20.07.2022 in

which direction was given to the respondent authorities to file reply/written

submission. It is submitted that when the matter came up for hearing on 07.08.2023 in the presence of the petitioner, one last opportunity was given to the respondent to file reply and the case was adjourned for 13.09.2023 as the respondent was absent and the present petitioner was present. It is further submitted that thereafter, behind the back of the petitioner, the respondent appeared and the matter was taken up again and the reply was submitted by the respondent and the State Information Commissioner, Punjab, without passing any speaking order and by merely mentioning that the authority had gone through the reply and agreed with the reply, disposed of the case. It is stated that apart from the fact that the impugned order is in grave violation of the principle of natural justice, the same is also against various judgments passed by this Court including judgment of this Court passed in **CWP-17672-2023** titled as “**Rajwinder Singh vs. State of Punjab and others**” decided on 16.08.2023 and thus, at any rate, the impugned order deserves to be set aside and the second appeal filed by the petitioner deserves to be decided after hearing the petitioner and after considering the judgment passed by this Court in **Rajwinder Singh’s** case (supra) by passing a speaking order.

3. Learned State counsel has submitted that the State Information Commissioner, Punjab would reconsider the matter and decide the second statutory appeal, in accordance with law and also the directions issued by this Court in **Rajwinder Singh’s** case (supra) and other related matters, by passing a speaking order after hearing the petitioner, expeditiously.

4. This Court has heard learned counsel for the parties and has perused the paper book.

5. The impugned order dated 07.08.2023 is reproduced

hereinbelow:-

“ORDER

This order may be read with reference to the previous order dated 28.07.2023.

2. The perusal of the file shows that on the previous date of hearing, the appellant had given in writing that he does not need the amount of compensation. The same has been mentioned in the orders dated 28.07.2023. Hence, the amount of compensation is, hereby, waived of. Further, it is observed that the appellant has filed his submission in the Commission. I have gone through the same and do not agree with the same and hence the plea of the appellant is rejected.

3. The respondent is absent today.

4. Taking a lenient view, one last opportunity is given to the respondent to file point wise reply.

5. To come up on 13.09.2023 at 12.00 PM for further proceedings in the Commission.

Copy of the order be sent to the parties.

Date: 7th August, 2023

Sd/-

*(Amrit Partap Singh Sekhon)
State Information Commissioner
Punjab*

Note: After the order was dictated in the open court, the respondent Sh. Khush Pal Singh, SDE appeared alongwith point-wise reply. I have gone through the same and have agreed. Copy of the reply, as submitted by the respondent be sent to the appellant alongwith these orders.

In view of the foregoing, no further cause of action is left, hence the above said appeal case filed by the appellant is disposed of and closed. Copy of the order be sent to the parties.

Date: 7 August, 2023

Sd/-

*(Amrit Partap Singh Sekhon)
State Information Commissioner
Punjab*

A perusal of the above order dated 07.08.2023 would show that initially the case was taken up and since the respondent was absent, one last opportunity was granted to the respondent to file point wise reply and the matter was adjourned for 13.09.2023. Thereafter, the matter was again taken up on 07.08.2023, and it was observed that the respondent had appeared and the point wise reply had been seen by the State Information Commissioner,

Punjab and he had agreed with the same. It is the case of the petitioner that the latter part of the order was passed in his absence and thus, there is violation of the principle of natural justice. At any rate, the impugned order is non-speaking and is in absolute violation of the law laid down by this Court in ***Rajwinder Singh's*** case (supra), ***CWP-1877-2022*** titled as ***"Gagnish Singh Khurana vs. State of Punjab and others"*** and ***CWP-15500-2023*** titled as ***"Gopal Krishan Gupta vs. Central Information Commission and others"***. The relevant portion of the judgment in ***Rajwinder Singh's*** case (supra) is reproduced hereinbelow:-

"9. This Court in another judgment dated 21.07.2023 passed in CWP-15500-2023 titled as "Gopal Krishan Gupta Vs. Central Information Commission and others", while dealing with a cryptic and non-speaking order passed by the Central Information Commissioner under Section 19(3) read with Section 20 of the Act of 2005, had observed as under:-

"5. Relevant portion of the order dated 28.02.2023 (Annexure P11) is reproduced herein below: -

"The fact is that no final point-wise reply was provided on any of the points to the appellant as per the record.

In view of the same, the CPIO is directed to provide a final consolidated reply on all the points as provided by the concerned custodians within 7 days from the date of receipt of this order.

The appeals are disposed of accordingly."

6. A perusal of the above-said order would show that after considering the entire matter, the Information Commissioner was of the opinion that no final point-wise reply has been provided to the appellant as per the record and thus, had directed the CPIO to provide a final consolidated reply on all the points as provided by the concerned custodians within 7 days from the date of receipt of this order. However, instead of waiting for the reply, the Information Commissioner disposed of the appeal without final adjudication of the matter and that the said procedure is not in accordance with law.

7. A perusal of Section 19 of the RTI Act would show that under sub-Section 3, an aggrieved person has a right to file the second appeal before the Central Information Commission or the State Information Commission and that, under sub-section (8), the Central Information Commission has been given several powers including the power requiring the public authority to compensate the complainant for any loss or detriment suffered

or to impose any of the penalties provided under the Act. Section 19 of the RTI Act, is reproduced herein below: -

***“19. Appeal.—**(1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:*

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission: Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from

the date of filing thereof as the case may be, for reasons to be recorded in writing.

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

(i) by providing access to information, if so requested, in a particular form;

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be; (iii)

by publishing certain information or categories of information;

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(v) by enhancing the provision of training on the right to information for its officials;

(vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act; (d) reject the application.

(9) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

8. Section 20 of the RTI Act provides that in case, the Central Information Commission at the time of deciding any complaint or appeal, is of the opinion that the Central Public Information Officer has, without any reasonable cause, not furnished information within the time specified under subsection (1) of Section 7 or has malafidely denied the request for information etc., then, it is empowered to impose a penalty of two hundred and fifty rupees each day till the information is furnished. Section 20 of the RTI Act is reproduced as under: -

“20. Penalties.—(1) Where the Central Information Commission or

the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.”

9. A conjoint reading of the above reproduced provisions would show that once a second appeal has been filed by an aggrieved person, then, after considering all the aspects, the matter is required to be finally adjudicated. In case, the Information Commissioner is of the opinion that the ingredients, as specified in Section 20 of the RTI Act are met,

appropriate action is also required to be taken. In the present case, after prima facie holding in favour of the petitioner with respect to points No. (a) and (b) and after directing the CPIO to file a revised reply, the appeals have been disposed of by respondent No.2 without waiting for the said reply and without finally adjudicating the matter and thus, to the said extent, the impugned order deserves to be set aside”

The State Information Commissioner, Punjab, while adjudicating the second statutory appeal filed by the petitioner under Section 19(3) of the Act of 2005 was acting as a quasi judicial authority and was, therefore, required to adjudicate the case after considering the facts of the case, pleas raised by both the parties and was required to record reasons for rejecting the pleas of one party and accepting the pleas of the other party by passing a reasoned order. The order should have been self-explanatory and reasons given in the same should not have been rubber stamp reasons. The same has not been done in the present case and the impugned order passed is cryptic and non-speaking as has been detailed in para 7 of the present order.

10. Keeping in view the abovesaid facts and circumstances, the present Civil Writ Petition is partly allowed and the impugned order dated 06.03.2023 (Annexure P-9) is set aside and the matter is remanded to the State Information Commissioner, Punjab for deciding Appeal Case No.452 of 2023 afresh after giving an opportunity of hearing to the contesting parties. The State Information Commissioner, Punjab, is directed to pass a speaking order dealing with the contentions raised by both the parties. The parties through their counsel are directed to appear before the State Information Commissioner, Punjab, on 24.08.2023.

11. It is, however, made clear that this Court has not given any final opinion on the merits of the case and it would be open to the State Information Commissioner, Punjab, to consider the case independently and in accordance with law.

12. This Court has found that in a large number of cases, the authorities including the first Appellate Authority {(while adjudicating the first statutory appeal under Section 19(1))} and the second Appellate Authority {(while adjudicating the second statutory appeal under Section 19(3))} under the Act, have been passing cryptic and non-speaking orders in violation of the judgments passed by the Hon’ble Supreme Court and various High Courts and also in violation of the mandate of the Act of 2005. It is, thus, found necessary to give the following directions to the first Appellate Authority and second Appellate Authority under the Act of 2005 to clearly specify the following at the time of finally adjudicating the case:-

i) The points on which the information is sought by the applicant as per his/her application filed under the Act of 2005.

ii) The point-wise reply with respect to the information sought.

iii) A categorical finding as to whether the information on any of the points has been supplied or not and if supplied, the date on which it has been supplied.

iv) In case, it is the stand of the authorities from whom the information is sought that the information sought under a particular point is not to be supplied on account of any bar contained in any provisions of the Act of 2005 or for any other reason, then, after recording the said stand and after considering the submissions made by both the parties with respect to said point/issue, return a finding with respect to the said issue/point.

v) Any other observation which the authority deems fit in the facts and circumstances of the case to be recorded.

13. The Chief Secretary to the States of Punjab & Haryana and the Advisor to the Administrator, Chandigarh are directed to circulate the judgment passed in the present case i.e. **CWP-17672-2023** titled as “**Rajwinder Singh Vs. State of Punjab and others**” and the **judgment dated 13.07.2023** passed in **CWP-1877-2022** titled as “**Gagnish Singh Khurana Vs. State of Punjab and others**” as well as the **judgment dated 21.07.2023** passed in **CWP-15500-2023** titled as “**Gopal Krishan Gupta Vs. Central Information Commission and others**”, to all the authorities constituted under the Act for complying with the same.”

6. As per the above said judgment, since this Court had found that in large number of cases, non-speaking orders were being passed, thus, directions were given as contained in paragraph 12 of the said judgment, and the said judgment along with the other two judgments passed by this Court, were directed to be circulated to all the authorities constituted under the Act for complying with the same. The impugned order passed in the present case is not in consonance with the judgments passed by this Court in **Rajwinder Singh’s** case (supra), **Gagnish Singh Khurana’s** case (supra) and **Gopal Krishan Gupta’s** case (supra) and thus, deserves to be set aside on the said ground alone and is accordingly, set aside and respondent no.2 is directed to decide the second appeal filed by the petitioner dated 02.06.2021 afresh after giving an opportunity to the petitioner to make submissions and after passing a speaking order in compliance with the

judgment passed by this Court in ***Rajwinder Singh’s*** case (supra).

7. It is made clear that this Court has not opined on the merits of the case and respondent no.2 would consider the case independently, in accordance with law, expeditiously.

(VIKAS BAHL)
JUDGE

November 20, 2023.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No